

Assessing the Remedial Secession Theory (RST) in Light of Philosophical Schools of International Law: The Battleground of Natural Law and Legal Positivism

Sattar Azizi^{*}
Mousa Karami^{**}

DOI: 10.22096/HR.2023.1989510.1558

[Received Date: 09/02/2023 - Accepted Date: 29/07/2023]

Abstract

RST, emerging in the framework of the external right to self-determination of groups characterized as people, is among the most controversial newly developed concepts in international law in general and international minority rights law, in particular. By examining the views of this theory's proponents and opponents, the footprints of philosophical schools of international law, particularly the two schools of natural law and legal positivism, are seen behind the arguments made by the proponents and opponents. Proponents of this theory can be classified as the adherents of the natural law school and its fundamental principles. Its opponents are considered to be followers of the legal positivism school. Opening the door for entrance and influence of moral values and principles to international law, the adherents of natural law theory regard RST as a last resort for saving the oppressed against an oppressive state and deem it permissible and legitimate. The legal positivism school's followers, emphasizing the will and interests of states, reject this theory in the framework of positive law and contemporary international law, which is generally and mainly based on the state's consent. Employing a descriptive-analytical method and relying on the related books and articles, this study aimed to assess the RST in the light of natural law and legal positivism schools.

Keywords: Remedial Secession; natural law; legal positivism; people; right to self-determination; creation of states.

*Professor, Faculty of Humanities, Bu-Ali Sian University, Hamedan, Iran. (Corresponding Author)

Email: satarazizi@ymail.com

**Ph. D. Candidate in Public International Law, Faculty of Law, University of Qom, Qom, Iran

Email: mousakarami136767@yahoo.com



Bibliography

- Azizi, Sattar. *Right to Self-Determination in the Mirror of International Law (Vol I: Right to External Self-Determination)*. Hamedan: Bu Ali Sina University Press, 2022. [In Persian]
- Bagheri Abyaneh, Alireza, and Mojtaba Ansarian. "A Postmodern Critique of Legal Positivism in International Law", *Legal Researches* 18, no 37 (May 2019): 7-26. [In Persian]
- Bossacoma Busquets, Pau. *Morality and Legality of Secession: A Theory of National Self-Determination*. Cham: Palgrave Macmillan, 2020.
- Buchheit, Lee C. *Secession: The Legitimacy of Self-Determination*. Connecticut: Yale University Press, 1978.
- Capps, Patrick. "International Legal Positivism and Modern Natural Law." In *International Legal Positivism in A Post-Modern World*, edited by Jean D'Aspermont and Jorg Kammerhofer, 213-240. Cambridge: Cambridge University Press, 2014.
- Cismas, Iona. "Secession in Theory and Practice: The Case of Kosovo and Beyond." *Goettingen Journal of International Law* 2, no. 2 (2010): 531-587.
- Collins, Richard. "Classical Legal Positivism in International Law Revisited." In *International Legal Positivism in A Post-Modern World*, edited by Jean D'Aspermont and Jorg Kammerhofer, 23-49. Cambridge: Cambridge University Press, 2014.
- Crawford, James. "The Right of Self-Determination in International Law: Its Developments and Future." In *Peoples' Rights*, edited by Philip Alston. Oxford: Oxford University Press, 2001.
- Crawford, James. *The Creation of States in International Law*. 2nd edition. New York: Oxford University Press, 2006.
- Crowe, Jonathan. "Clarifying the Natural Law Theory." *Australian Journal of Legal Philosophy* 37 (2012): 159-181.
- Crowe, Jonathan. "Natural Law Beyond Finnis." *Jurisprudence* 2, no. 2 (2011): 293-308.
- Crowe, Jonathan. "Natural Law Theories." *Philosophy Compass* 11, no. 2 (2016): 91-101.
- D'Aspermont, Jean, and Kammerhofer, Jorg. "Introduction: The Future of International Legal Positivism." In *International Legal Positivism in A*

- Post-Modern World*, edited by Jean D'Aspermont and Jorg Kammerhofer, 1-22. Cambridge: Cambridge University Press, 2014.
- Del Mar, Katherine. "The Myth of Remedial Secession." In *Statehood and Self-Determination: Reconciling Tradition and Modernity in International Law*, edited by Duncan French, 79-108. Cambridge: Cambridge University Press, 2013.
- Ebrahimgol, Alireza, and Siamak Karimi. "Contrast Between Territorial Integrity and Human Rights: Legal Evaluation of Remedial Secession Theory", *Iranian Research Letter of International Politics* 3, no 2 (Spring and Summer 2015): 1-27. [In Persian]
- Falsafi, Hedayatollah, *Perpetual Peace and Rule of Law*. Tehran: Farhang Nashr-e-Nou and Asim Publication, 2011. [In Persian]
- Ghari Seyed Fatemi, Seyed Mohammad. *Human Rights in the Contemporary World (Vol I: An Introduction to Theoretical Discussions: Concepts, Foundations, Scope and Resources)*. Tehran: Shahr-e-Danehs Publication, 2011. [In Persian]
- Ghorbannia, Naser. "Different Readings of Natural Rights", *Islamic Law* 1, no 1 (Summer 2004): 37-58. [In Persian]
- Ghorbannia, Naser. "Law, the Translation of Ethics", *Criticism and Idea* 4, no. 13-14 (January 1997): 384-408. [In Persian]
- Ghorbannia, Naser. *Human Rights and Humanitarian Law*. Tehran: Institute for Islamic Culture and Thought, 2011. [In Persian]
- Habibi, Homayoun, and Ali Navari. "Evaluating the Existence of the Remedial Right to Secession as a Rule of Customary International Law", *International Law Review* 31, no 51 (March 2015): 97-124. [In Persian]
- Haddadi, Mehdi, and Siamak Karimi. "Violating Human Rights and Separatism: A Critical Approach to Remedial Secession Theory in International Law", *Public Law Studies Quarterly* 45, no 4 (February 2016): 715-736. [In Persian]
- Javid, Mohammad Javad, and Mohammad Mahdi Khosravi. "Legal Foundations of Positivism and Its Impacts on Legal Justice", *Public Law Studies Quarterly* 49, no 3 (Fall 2019): 735-755. [In Persian]
- Katouzian, Naser. "Law, the Historical Sediment of Ethics: An Introduction to the Relationship Between Ethics and Law", *Ayin*, no. 24-25 (December 2008-January 2009): 7-10. [In Persian]
- Katouzian, Naser. *Philosophy of Law (Vol I: Definition and Nature of Law)*. Tehran: Sahami-e-Enteshar Co, 2013. [In Persian]

- Mahmoudi, Seyed Hadi, and Reza Hamidzadeh. "Feasibility Study for the Realization of New Natural Law On International Relations", *Legal Researches Quarterly* 22, no 86 (August 2019): 265-290. [In Persian]
- Peters, Anne. "Does Kosovo Lie in the Lotus-Land of Freedom?." *Leiden Journal of International Law* 24, no. 1 (2012): 95-108.
- Ratner, Steven. "Drawing a Better Line: uti possidetis and the Borders of New States." *American Journal of International Law* 90, no. 4 (1996): 590-624.
- Sadeghi, Mohammad, and Mahdiyeh Sane'ie. "Law and Ethics in the Opinions of John Austin, Kelsen, Hart and Kant: Searching for an Effective Legal System", *Private and Criminal Law Researches* 12, no 2 (Summer 2016): 111-124. [In Persian]
- Separate Opinion of Judge Dillard in Western Sahara Advisory Opinion, 16 October 1975, available at: <https://www.icj-cij.org/public/files/case-related/61/061-19751016-ADV-01-07-EN.pdf>.
- Separate opinion of Judge Trindade in the Case Concerning Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Request for Advisory Opinion), 22 July 2010, available at: <https://www.icj-cij.org/public/files/case-related/141/141-20100722-ADV-01-08-EN.pdf>.
- Separate Opinion of Judge Yusuf in the Case Concerning Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Request for Advisory Opinion), 22 July 2010, available at: <https://www.icj-cij.org/public/files/case-related/141/141-20100722-ADV-01-09-EN.pdf>.
- Shahbazi, Aramesh. *Philosophy of International Law (Vol I: Positivism)*. Tehran: Shahr-e-Danesh Publication, 2016. [In Persian]
- Thornberry, Patrick. "Self-Determination, Minority, Human Rights: A Review of International Instruments." *International and Comparative Law Quarterly* 38, no. 4 (October 1989): 867-889.
- Tomuschat, Christian. "Secession and Self-Determination." In *Secession: International Law Perspectives*, edited by Marcelo G. Kohen, 23-45. New York: Cambridge University Press, 2006.
- Vaca, Moises, and Artiga, Marc. "A Defense of the Moral and Legal Right to Secede." *Ethics and Global Politics* 14, no. 1 (2021): 18-35.

- Vidmar, Jure. "Remedial Secession in International Law: Theory and (Lack of) Practice." *St Anthony's International Review* 6, no. 1 (Secession, Sovereignty, and the Quest for Legitimacy) (May 2010): 37-56.
- Weller, Marc. "Settling Self-Determination Conflicts: Recent Developments." *European Journal of International Law* 20, no. 1 (2009): 111-165.
- Wheatley, Steven. *Democracy, Minorities and International Law*. New York: Cambridge University Press, 2005.
- Zarneshan, Shahram and, Seyed Hossein Mirja'fari. "Legal Positivism Place in the Organs of the United Nations", *Public Law Studies Quarterly* 48, no 4 (January 2019): 715-734. [In Persian]
- Ziaie Bigdeli, Mohammadreza. *Public International Law*. Tehran: Ganj-e-Danesh Publication, 2022. [In Persian]